trustee of it to the amount it exceeds his interest in the life of the insured, so as to be able to recover the full sum from the insurer. *American, etc., Co.* v. *Robertshaw*, 26 Pa. St. 189. Moreover choses in action, whether equitable or legal, may be assigned in trust, and an assignment absolute on its face may be shown to have been subject to a trust. *Way's Trusts*, 2 De G. J. & S. 365; *Denton* v. *Peters*, L. R. 5 Q. B. 475. It is true that in the principal case the donor never took title to the subject of the gift. But, though no case exactly like this has been found, on principle there seems no reason why he should on this account be less able to declare a trust.

TRUSTS — CONSTRUCTIVE TRUSTS — BUCKET SHOP TRANSACTIONS WITH TRUST FUNDS. — A trustee misappropriated trust money and delivered it to the defendants, proprietors of a bucket shop, to be used in gambling transactions, which were illegal by statute. A certain amount was returned to the trustee as profits. The defendants had no notice of the trust. *Held*, that the *cestui que trust* may recover the whole amount delivered to the defendants, without deducting the sum returned to the trustee. *Bendinger* v. *Central, etc., Exchange*, 109 Fed. Rep. 926 (C. C. A., Seventh Circ.). See NOTES, p. 404.

TRUSTS — PROCEEDS OF INSUFFICIENT SECURITY — PRINCIPAL AND INCOME. — A testator devised property in trust to pay the income to A for life, and then in trust for B. The property included a mortgage which the trustee was obliged to foreclose. The proceeds of the foreclosure sale fell short of the amount of the principal, and there was also due a considerable sum as back interest. *Held*, that the amount realized is to be apportioned to principal and interest in the ratio of the amounts due from the mortgagee under those respective heads. *In re Alston*, [1901] 2 Ch. 584.

Only one similar case has been found treating the entire sum as principal. *In re Grabowski*, L. R. 6 Eq. 12. But at least three different rules of apportionment have been followed in England. One of these apportions as principal that sum which, put at interest for the period during which interest was unpaid, would, at the usual rate for trust estates, have amounted to the sum recovered. *Cox* v. *Cox*, L. R. 8 Eq. 343. Another rule adds the interest previously received to the amount realized on foreclosure, and apportions this total sum in the ratio of the original principal to the interest for the entire period, debiting the life tenant with the interest received. *In re Foster*, 45 Ch. D. 629. The principal case adopts the third rule, following *In re Moore*, 54 L. J. Ch. 432. Authority in the United States is divided between the first and third rules. *Roosevelt* v. *Roosevelt*, 5 Redf. (N. Y.) 264; *Hagan* v. *Platt*, 48 N. J. Eq. 206; see also *Kinmoth* v. *Brigham*, 5 Allen (Mass.) 270. The rule of the principal case seems based on the true nature of the transaction. The claim filed upon foreclosure included principal and interest, and the amount recovered should be divided proportionally to the amounts due under those heads.

BOOKS AND PERIODICALS.

THE TEST OF CONSIDERATION. — In the first edition of his work on Contracts, Sir Frederick Pollock contended that performance of an obligation due one party could neve be regarded as consideration for a contract with another party, since in contemplation of law it constituted no detriment, but that a promise to perform an act already due another, since it created a new right, might be so regarded. POLL., CONT'S, 1st ed., 158, 159. As examples of this later class, he cited *Shadwell* v. *Shadwell*, 9 C. B. N. S. 158, and *Scotson* v. *Pegg*, 6 H. & N. 295. In later editions he receded from this position, and seemed to doubt the validity of both performance and promise. POLL., CONT'S, 6th ed., 175–177. In a recent article, consisting of passages intended for the forthcoming seventh edition of his book, he has clearly retaken his first position, and in addition has recognized *Shadwell* v. *Shadwell*, *supra*, and *Scotson* v. *Pegg*, *supra*, as cases of the performance of, as distinguished from the promise to perform, a preëxisting obligation. *Afterthoughts on Consideration*, by Sir Frederick Pollock. 17 L. Quart. Rev. 415 (Oct., 1901).

The discussion evoked by this subject, since it turns on the fundamental nature of consideration, has been widespread. It has been vigorously contended that any detriment in fact should constitute consideration, and that such is here found, both in the performance and in the promise to perform. 12 HARV. L. REV. 515, *et seq.* Sir Frederick Pollock rejects this view with slight argument on the ground that detriment in contemplation of law, as distinguished from detriment in fact, has always been regarded as the test of consideration. He contends that as the cases here under discussion are extremely infrequent, the settled principles of contracts should be rigidly applied to them. It must be admitted that detriment in contemplation of law has been the phrase generally used by the courts, and yet, in endeavoring to do justice, they have often gone far beyond this test in their decisions. *Abbott* v. *Doane*, 163 Mass. 433. To the results we should look for the law, rather than to phrases which we have inherited from the past. Again, while cases involving the point here under discussion have been infrequent, cases where the previously existing obligation ran between the same parties who attempted to make the new contract have been frequent, and as the two classes of cases are so analogous, the decisions in one class must have a vital practical influence on the decisions in the other. In consequence this discussion ought not to be purely academic. Furthermore we should remember that the doctrine of consideration, after centuries of development and uncertainty, has only recently begun to assume rigid limitations. Under these circumstances there seems no sufficient reason for refusing to satisfy a business sense of justice by recognizing detriment in fact as the test of consideration.

VESTED INTEREST OF A BENEFICIARY UNDER A POLICY OF LIFE INSURANCE. — The nature and the extent of the rights of the beneficiary under a policy of insurance are problems which have given rise to much conflict of authority. In cases where the beneficiary takes out the policy and pays the premiums, or where the insured is under a legal obligation to the beneficiary to procure and to maintain the policy, it is very properly held that the insured cannot by any act destroy the interest of the beneficiary. But courts almost universally go further, and hold that in all cases, unless express provision to the contrary is made, whether the above conditions are present or not, the beneficiary has the same right. *Central Bank* v. *Hume*, 128 U. S. 195; but see, *contra*, *Clark* v. *Durand*, 12 Wis. 223. The conflict of authority as to the extent of the right is so general that it seems impossible to bring the decisions into harmony with any legal principle. A recent writer, however, has undertaken to define the so-called "vested interest" of the beneficiary and to formulate the legal principle upon which it rests. *Vested Interest of Beneficiary under a Policy of Life Insurance*, by Alexander H. Robbins. 53 Central L. J. 184 (Sept. 6, 1901). The author finds the origin of the doctrine in the pecuniary interest which the beneficiary usually has in the life of the insured, and contends that the contract is "in the nature of an irrevocable trust." He further points out that the word "vested" means only that the beneficiary has an absolute, irrevocable right to the proceeds of the policy upon the happening of all the contingencies and the fulfilment of all the conditions. Important results follow from this limitation. The beneficiary's right is thus made contingent, and the sole present right is to prevent the insured from impairing the future right to take the proceeds.

Mr. Robbins's contention that the doctrine reaches just results and works out the intention of the parties is entirely warranted. But the principles by means of which he arrives at his conclusions seem questionable. The language of trusts, frequently employed by courts and by writers, seems to have no application. The insured never had any intention of making himself a trustee; on the other hand, the obligor cannot be a trustee, since there is in his hands no *res* to be kept apart for the benefit of the *cestui*.

The theory of contracts that the sole beneficiary may sue directly in his own name seems to offer a fair solution. If that general principle be once accepted,